



COLORADO

Department of Public
Health & Environment

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October 8, 2019

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REF: SandRidge Exploration and Production - Bighorn Pad, AIRS ID 057/0051
SUBJECT: Response to comments on Draft Initial Operating Permit 17OPJA401

Dear Mr. Nichols,

WildEarth Guardians (WEG) submitted comments to both the Colorado Air Quality Control Commission (AQCC) and the Colorado Department of Public Health and Environment (CDPHE) Air Pollution Control Division (Division) on the draft renewal Operating Permit (17OPJA401) and supporting Technical Review Document (TRD) for SandRidge Exploration and Production, Bighorn Pad via email on April 4, 2019.

Comment:

"Under Clean Air Act, the APCD must ensure that any Title V Operating Permit includes emissions limitations and standards that assure compliance with applicable requirements. See 40 C.F.R. § 70.6(a)(1); see also Air Quality Control Commission ("AQCC") Regulation No. 3, Part C, Section V.C.1. Applicable requirements include any "standard or other requirement" set forth in the Colorado State Implementation Plan ("SIP"). 40 C.F.R. § 70.2 (setting forth definition of "Applicable requirement"). Where a source is not in compliance with applicable requirements, the APCD must ensure that any Title V Operating Permit includes "[a] schedule of compliance." 40 C.F.R. § 70.6(c)(3); see also AQCC Regulation No. 3, Part C, Section V.C.16.c. Such a schedule must include a "schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance[.]" 40 C.F.R. § 70.5(c)(8)(C); see also AQCC Regulation No. 3, Part C, Section III.C.9.

In this case, the proposed Title V Permit not only fails to ensure that the Bighorn Pad operates in compliance with applicable requirements, but also fails to include a schedule of compliance to bring the Bighorn Pad into compliance with applicable requirements. Accordingly, the proposed Permit fails to comply with the Clean Air Act and applicable requirements under 40 C.F.R. § 70 and under Colorado's approved Title V permitting program.

At issue is the fact that Sand Ridge illegally constructed and began operating a major stationary source of air pollution without complying with major source permitting requirements the Clean Air Act's Prevention of Significant Deterioration ("PSD") program and the Colorado SIP at AQCC Regulation No. 3, Part D.

Under the Colorado SIP, a new major stationary source of air pollution "shall not

begin” actual construction unless a permit has been issued containing “all applicable state and federal requirements.” AQCC Regulation No. 3, Part D, Section I.A.1. Within attainment or unclassifiable areas, a “major stationary source” is defined as “any stationary source that emits, or has the potential to emit” 250 tons per year or more of any regulated new source review pollutant. AQCC Regulation No. 3, Part D, Section II.A.24.a.(ii). “Potential to emit” is defined under the SIP as, “The maximum capacity of a stationary source to emit a pollutant under its physical and operational design.” AQCC Common Provisions Regulation, Section I.G. To the extent that emission controls or other physical or operational limitations are factored into the calculation of potential to emit, such limitations can only be considered against a source’s maximum capacity to emit if they are “state enforceable and federally enforceable.” *Id.* The term “federally enforceable” means all limitations and conditions that are “enforceable by the U.S. [Environmental Protection Agency] Administrator.” *Id.*

Under the Clean Air Act’s PSD program and the Colorado SIP, a permit for a major source in an attainment or unclassifiable area can only be issued if it meets a number of requirements. Among them, a permit can only be issued if it meets “best available control technology” requirements, if a source impact analysis demonstrates that emissions “will not cause or contribute to” violations of PSD increments or national ambient air quality standards, if it is based on an analysis of impacts to visibility and other air quality-related values, and if it is based on appropriate pre-construction monitoring. *See generally* AQCC Regulation No. 3, Part D, Section VI. Here, the Bighorn Pad was a major stationary source when it was constructed and first put into operation. Unfortunately, Sand Ridge never obtained a PSD permit and has since failed to operate the Bighorn Pad in compliance with any PSD requirements.

That the Bighorn Pad was a major stationary source when it was constructed and first put into operation is confirmed by Sand Ridge’s own certified reports to state regulators.

According to records with the Colorado Oil and Gas Conservation Commission, the two Hebron wells that make up the Bighorn Pad were spudded in April 2016, meaning that construction commenced at or around that time. *See* Exhibit 1, Notices of Spudding for Hebron 3-18H and Hebron 4-7H Wells. The wells were subsequently subject to hydraulic fracturing in May 2016. *See* Exhibit 2, Notices of Hydraulic Fracturing Treatment for Hebron 3-18H and Hebron 4-7H Wells. According to Sand Ridge, the wells were put into production in June 2016.

It was not until September 21, 2016 that Sand Ridge first applied for a construction permit for the Bighorn Pad pursuant to the Colorado SIP and submitted APENs for its emission points to the APCD. The company’s application and APENs disclosed that the Bighorn Pad’s potential to emit for volatile organic compound (“VOC”) emissions amounted to 2,654.38 tons per year. *See* Exhibit 4, Bighorn Pad Application Submittal (Sept. 21, 2016). In spite of this, Sand Ridge’s September 2016 permit application was not for a major source permit. Instead, Sand Ridge only sought a minor source construction permit pursuant to AQCC Regulation No. 3, Part B.

Accordingly, Sand Ridge failed to obtain the proper major source PSD permit for the Bighorn Pad prior to construction and operation. The proposed Title V Permit must therefore be written to bring the facility into compliance with PSD or otherwise be denied.

Although APCD and Sand Ridge may claim that the Bighorn Pad operated with emission controls after being constructed and put into operation, any emission controls utilized at the facility were not subject to any federally enforceable limits. It is telling that in applying for a preconstruction permit in September 2016, six

months after beginning construction of the Bighorn Pad, Sand Ridge sought a “synthetic minor” preconstruction permit pursuant to AQCC Regulation No. 3, Part B. A synthetic minor permit can only be issued to a source that would be a major but for the establishment of federally enforceable limits. The fact that Sand Ridge sought a synthetic minor permit in September 2016 underscores that the Bighorn Pad was a major source when construction began and when the facility was put into operation. While Sand Ridge ultimately obtained a synthetic minor preconstruction permit, the company obtained the permit in August 2017. See Exhibit 5, Construction Permit 16JA1055 (Aug. 28, 2017). This means that Sand Ridge constructed and operated a major source for nearly a year and a half before ever obtaining a permit pursuant to the Colorado SIP.

Furthermore, the issuance of this synthetic minor permit did not serve to absolve Sand Ridge of its duty to comply with major source permitting requirements. Sand Ridge was required to obtain and operate in compliance with a major source permit prior to construction of the Bighorn Pad. The Colorado SIP does not allow major sources to construct and begin operations, and then apply for and obtain a synthetic minor permit after the fact. If a polluter desires to have its stationary source of air pollution permitted as a synthetic minor source, the Colorado SIP requires that the polluter apply for and obtain a synthetic minor permit prior to construction.

Finally, the permit issued in August 2017 simply did not require the use of best available control technology or otherwise ensure protection of air quality consistent with PSD requirements under the Colorado SIP at AQCC Regulation No. 3, Part D. To this day, the Bighorn Pad is not operating in compliance with a PSD permit and not operating in a manner that equates to compliance with PSD requirements under the Colorado SIP.

Given Sand Ridge’s ongoing noncompliance with PSD permitting requirements under the Colorado SIP, the APCD must deny the proposed Title V Permit as drafted as it would fail to assure the Bighorn Pad operates in compliance with applicable requirements.

If the APCD believes a Title V Permit should be approved, it must instruct Sand Ridge to submit a new permit application that contains a compliance schedule and it must rewrite the permit to both incorporate this compliance schedule and assure the Bighorn Pad operates in compliance with PSD permitting requirements.”

Division Response:

The Division disagrees with the comments submitted by WildEarth Guardians. The purpose of the Title V permit is to compile applicable requirements into one enforceable document and many of the requirements come from previously issued construction permits. The EPA and courts have determined that it is not the purpose of the Title V program to reconsider previous permit actions as you have requested. As specified in the EPA Title V Petition order, In the Matter of Big River Steel, LLC, Order on Petition VI-2013-10 (October 31, 2017) (BRS Order):

“Title V permitting is not intended to second-guess the results of state preconstruction permit programs... As the EPA and courts have noted on many occasions, title V was not intended to add new substantive requirements. See, e.g., *United States Sugar Corp. v. EPA*, 830 F.3d 579, 597 (D.C. Cir. 2016) (‘Title V does no more than consolidate ‘existing air pollution requirements into a single document, the Title V permit, to facilitate compliance monitoring’ without imposing new substantive requirements.’ (quoting *Sierra Club v. Leavitt*, 368 F.3d 1300, 1302 (11th Cir. 2004))); *United States v. Cemex, Inc.*, 864 F.Supp.2d 1040, 1045 (D. Colo. 2012) (‘Title V permits do not generally impose any new emission limits, but are intended to incorporate into a single document all of the Clean Air Act requirements applicable to a

particular facility' and to provide for monitoring and other compliance measures.' (quoting United States v. EME Homer City Generation L.P., 823 F.Supp.2d 274, 283 (W.D. Pa. 2011)))”

Issues and concerns with construction permits need to be addressed during the construction permit process, not during Title V permit processing. In this case, the draft construction permit (16JA1055) was published for a 30-day public notice on July 27, 2017 and received no comments.

The proposed renewal operating permit will next be sent to the U.S. Environmental Protection Agency (EPA) Region 8 staff for a 45 (calendar) day review period. At the end of that period, any revisions required by EPA will be incorporated into the permit, and the permit will be issued. Note that State and Federal regulations provide the opportunity for any person to petition EPA on certain issues related to the permit within 60 days of the end of the EPA review period. Please contact Mr. D.J. Law at EPA Region 8 at (303) 312-7015 for additional information.

We appreciate the time you took to review and comment on the draft renewal operating permit and provide meaningful comments to the Division.

Sincerely,



Blue Parish
Operating Permit Unit
Stationary Sources Program
Air Pollution Control Division

cc (via email):

D.J. Law, U.S. EPA Region 8
Gail Fallon, U.S. EPA Region 8
Matt Burgett, CDPHE
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